



BRIEF ON THE PROPOSED NATIONAL MINERALS POLICY

by Ben S. Malayang III, Ph.D.

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INTRODUCTION

This brief is submitted to EcoGov following a request for its review from the project. This is an individual assessment and posited on the assumption that others in the team have likewise submitted theirs. Except for a brief discussion of the matter with colleagues in the Policy, Legal, and Institutions (PLI) team, no other group process was undertaken to validate this assessment.

GENERAL ASSESSMENT

The proposed policy follows the Mining Code of 1995. It does not seem to contravene the spirit and letter of the Code. What it does seems to complement the Code in the particular areas where the Code suffers from problems with social rejection of mining. In brief, the policy seems to attempt a “laundering” of the Mining Code to make mining more saleable and socially palatable to its publics, but without compromising the full thrust of the Code to support large-scale commercial mining in the Philippines.

Most opposition to mining in the country today centers on two related concerns: social equity and environmental risks. Opponents of mining might have a higher concern for one or the other, but always using the two as basis of their opposition. To the extent that the policy will articulate a State commitment to ensure equity and low risks, and thus improve the social palatability of mining, the policy might be deemed a critical mechanism to boost national incomes from mining.

But in the end, its ability to do so hinges on one crucial issue: the extent to which the policy, an executive act, might be deemed of sufficient legal power to in fact counter the mainly commercial thrust of the Mining Code, which is a standing statute on mining in the country. For if not, the policy itself will amount to nothing but an expressed intention of the government more powered by political exigency than straight legal and regulatory obligations. In the event of implementation conflicts and conflicts of priorities between commercial mining operators and invokers of the policy, the first will most likely have sway by law than the other if the issue of the subsidiarity of the two is not clearly set.

Mining can be sustainable in but one sense of the term. It cannot be sustainable in the sense of the ability to continue extraction in perpetuity, because minerals are non-renewable resources. But it can be deemed sustainable in the sense that it is able to properly internalize its negative externalities and build up value added to ecological services that it might have otherwise disrupted. The calculus of its sustainability is simple enough: produce the highest net gains to the economy and society while producing ecological value added higher than the cumulative cost of its negative externalities. In this sense, the proposed mining policy does seem to be on the right direction because the Mining Code, in its present form, does not seem to put as much stress on externality internalization and ecological value added than what might be readily acceptable to its wider circle of stakeholders and the public.

SOME DETAILS

Latest government statistics on national physical accounts show that despite weak markets in the last ten years, mining in the Philippines had gained 3.6% in value in the last 7 years, from 24.5 billion pesos in 1994 to 24.4 billion pesos in 2001. However, so did the estimated value of the environmental degradation it had caused: up 159.3% from 224 million pesos in 1992 to 581 million pesos in 1996. This, it seems, is the principal trigger of the continuing wide opposition against mining as an economic activity in the country. Placed further in the context of extremely high biodiversity, low land base, rising demand for land due to a rising population, extremely socially sensitive tenure regimes involving indigenous peoples, and high downstream impacts of open extraction in a generally mountainous archipelago, the negative externalities of mining invite magnified cause for social and ecological concerns.

A complicating but apparently related trigger is the equity issue of mining. As articulated in the Mining Code, mining activities arrogate certain tenure rights to land and water resources in areas covered by an approved claim (the ancillary rights granted under the Code). It is unclear to what extent these ancillary rights are subsidiary to other equally legislated tenure allocations such as those for protected areas and for ancestral domains, but what is clear is that these rights do challenge local systems of statutory and customary tenure claims over lands and waters covered by an approved mining claim. Neither does the Code allow for equity arrangements between affected communities and holders of claims, including those granted by law clear rights to an affected area such as indigenous peoples living in the area since “time immemorial”.

The proposed policy focuses on these two problematic dimensions of mining in the country. It stresses “protection and rehabilitation of the environment,” the “promotion of social and community stability,” “preserving options for future generations,” and a “just and equitable sharing of benefits from mining” in the context of a “competitive and prosperous minerals industry.” All four thrusts are principally about ensuring environmentally responsible and socially responsive mining, addressing precisely the two main issues against it.

Clearly, if the policy gains public acceptability and legitimacy, it has the powerful potential to indeed enliven the mining industry. In an era of declining financial capacities of the government (its ability to provide budget support for services had incrementally declined by 34% in the last 4 years, from 17.5% in 1999-2000 to 11.5% in 2001-2002; expenditures for economic services declined 5.9% in the last 2 years, from 1.6 billion pesos in 2000 to 1.5 billion pesos in 2002; PSY 2002), this would assume high political and strategic financial import to the economy and the public sector. But this is a big if. First, the public must be convinced of the political commitment behind the policy, and that it is not merely a “sales pitch” or a “palliative” for mining. *Sans* a high public confidence on it, the policy will only be deemed of no value except as a desperate act on symbolism (or worse, an attempt at cooptation if not outright deception) on the part of government. This is a big if because much has to be done to win this confidence in a situation of declining general trust on government. Legislation and beautiful letters of law and regulations are not enough. Confidence is a complex condition to achieve.

RECOMMENDATIONS

Should or shouldn't EcoGov get involved in the development of this proposed policy? To the extent that the project is committed to support environmental governance initiatives of government, then, quite clearly, it must.

But the bigger question is how and to what extent. My sense is, if the project were to be involved, it might make more substantive gains if it were to focus on the problematique of developing public confidence on a policy that otherwise invites questions of legitimacy.

The project might focus on providing TA for evaluating the public acceptability of the proposed policy, and what governance undertakings and mechanisms might need to be put in place for the policy to gain substantial public trust.